NO. 42138-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ERIC RUSSELL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

Before the Honorable Toni Sheldon, Judge

OPENING BRIEF OF APPELLANT

Peter B. Tiller, WSBA No. 20835
Of Attorneys for Appellant

The Tiller Law Firm
Corner of Rock and Pine
P. O. Box 58
Centralia, WA 98531
(360) 736-9301

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REVISED CODE OF WASHINGTON **Page**

COURT RULES **Page**

RULES OF APPELLATE PROCEDURE **Page**

A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying appellant Eric Russell's motion to withdraw his plea.

2. The trial court erred in not ordering an evidentiary hearing to determine Mr. Russell's competency at the time of the plea hearing.

3. The trial court erred in entering Finding of Fact 6, which states:

> The Court rejects the defendant's allegations set forth in both Motions and Declarations filed by the defendant. The defendant was represented by competent counsel; the court which took the plea was very through [sic] with making sure the defendant was aware of the plea; the consequences of the plea; the nature of the charges in the plea; the potential and recommended sentences; and the various rights the defendant was giving up by pleading, especially that of a jury trial.

Clerk's Papers [CP] 11.

4. The trial court erred in entering Finding of Fact 7, which states:

> The defendant acknowledged being aware of those rights and potential consequences of the change of plea.

CP 11.

5. The trial court erred in entering Conclusion of Law 1, which states:

> The defendant made a knowing, intelligent and voluntary decision to enter a change of plea. The Court had a comprehensive colloquy with the defendant at which time the defendant acknowledged he was aware of the consequences of pleading guilty and the rights the defendant was waiving by pleading guilty.

CP 11-12.

6. The State breached the plea agreement by requesting a mental health examination—an additional condition of community custody not addressed in the State's recommendations—at the time of sentencing,

7. The trial court erroneously sentenced appellant to submit to a mental health evaluation and treatment as a condition of community custody.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should Mr. Russell be permitted to withdraw his plea where, because of his inability to hear well and his learning disability, his plea was not voluntary? Assignments of Error 1, 3, 4, and 5.

2. Should the trial court have ordered an evidentiary hearing to determine Mr. Russell's competency to enter a guilty plea in light of the record and Mr. Russell's declaration in support of his motion to withdraw his guilty plea? Assignment of Error 2.

3. Where a plea agreement limits the State's sentence recommendation to a first time offender sentence and is otherwise silent

concerning the State's position on community custody, did the State breach the plea agreement by requesting a mental health evaluation at the time of sentencing? Assignment of Error 6.

4. Did the trial court err when it imposed mental health treatment as a condition of community custody without following statutorily required procedures? Assignment of Error 7.

C. STATEMENT OF THE CASE

Eric Russell was charged by information filed in Mason County Superior Court with one count of manufacture of marijuana (Count I), and one count of unlawful possession of methamphetamine. (Count II). CP 64-65.

On November 15, 2010, the matter came before the Honorable Toni Sheldon for change of plea hearing. Report of Proceedings [RP] at 25-35. The State filed an amended information charging Mr. Russell with one count of possession of marijuana over 40 grams and possession of methamphetamine, contrary to RCW 69.50.4013(1). Appendix A. Mr. Russell entered a statement of defendant on plea of guilty to the amended information. RP at 26-34; CP 51-52, 53-61. Mr. Russell's plea was in the form of a "hybrid *Alford*" plea; he pleaded guilty to possession of marijuana, and entered an *Alford* plea to possession of methamphetamine.

CP 53-61. The guilty plea statement provided that the prosecuting attorney would recommend first time offender status, 35 days in jail with 30 days converted to alternative sanctions, credit for time served, and standard fines. CP 56; Guilty Plea Statement, p. 4.

At sentencing on January 4, 2011, Mr. Russell asked to withdraw his plea and to obtain new counsel to replace his attorney Clayton Longacre, and requested to continue sentencing. RP at 41-42. The court granted Mr. Russell's request to continue sentencing to February 7 so that he could obtain new counsel and to file a motion to withdraw his plea. RP at 46, 47.

On February 7, 2011, the deputy prosecutor informed the court that Mr. Russell had called his office and left a message that he had "fired Mr. Longacre." RP at 49. The deputy prosecutor stated that "[i]t is my understanding, Your Honor, from the message that he believes that he hasn't pled yet. He thought it was on today for a change of plea." RP at 49. Mr. Longacre stated that he thought that everything had been resolved and that he had learned that morning that Mr. Russell wanted to fire him. RP at 50. After a protracted hearing, the court permitted Mr. Longacre to withdraw and continued sentencing to March 7. RP at 58-59.

On March 7 Mr. Russell indicated that he did not have an attorney and that he would talk "to some more people and may come back and ask for court appointed counsel. RP at 66. Over the State's objection, the court continued sentencing to March 21. RP at 67.

On March 21 Mr. Russell asked for count appointed counsel and was appointed Ron Sergi. RP at 74. Over the State's objection, sentencing was continued to April 11. The court noted that if a motion to withdraw guilty plea was filed, it would be heard the same day. RP at 74.

Mr. Russell was not present in court on April 11 and the court issued a warrant. RP at 77.

On April 14 the parties appeared and Mr. Sergi explained that he should have contacted Mr. Russell on Friday or Sunday to remind him that he had court on Monday, and explained that Mr. Russell thought his court date was April 14. RP at 79, 80. The court quashed the warrant and set the matter for sentencing on April 18. RP at 83. Defense counsel filed a motion to withdraw plea on April 8, and an amended motion on April 15. CP 28, 33.

The motion came on for hearing before the Honorable Amber Finlay on April 18. Defense counsel argued that Mr. Russell's previous attorney—Mr. Longacre—did not spent sufficient time with him and that

because of his hearing impairment, he was unable to understand Mr. Longacre when he talked to him in the courtroom, that he has learning disabilities, and that he felt duress due to other pending issues with the Department of Fish and Wildlife. RP at 86. His hearing loss is due to working around industrial machinery. CP 34. After hearing argument from Mr. Russell's counsel, the State, and considering the motion and declarations of counsel filed by Mr. Russell's new attorney, the court denied the motion. RP at 92. On May 16, 2011, the court entered the following written Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The defendant was originally charged with Manufacture of a Controlled Substance; Marijuana, and Unlawful Possession of a Controlled Substance; Methamphetamine on June 22, 2010.
2. The defendant, after being appointed counsel, eventually retained the legal services of Clayton Longacre, Attorney at Law.
3. On November 15, 2010, the defendant changed his plea to amended information changing in one (1) count Unlawful Possession of a Controlled Substance; methamphetamine and/or more than 40 grams of Marijuana, to guilty.
4. After several continuances of the sentencing date, Mr. Longacre was allowed to withdraw and the court appointed different counsel than originally appointed because of a conflict.
5. New counsel on both April 8, 2011 and April 15, 2011 filed Motions and Declarations for an Order Allowing Wthdrawl[al] of Guilty Plea. The allegations set forth in both the original motion and the amended motion are incorporated by reference.
6. The Court rejects the defendant's allegations set forth in both Motions and Declarations filed by the defendant. The defendant was represented by competent counsel; the court which took the

plea was very through [sic] with making sure the defendant was aware of the plea; the consequences of the plea; the nature of the charges in the plea; the potential and recommended sentences; and the various rights the defendant was giving up by pleading, especially that of a jury trial.

7. The defendant acknowledged being aware of those rights and potential consequences of the change of plea.

THEREFORE, the Court makes the following:

CONCLUSIONS OF LAW

1. The defendant made a knowing, intelligent and voluntary decision to enter a change of plea. The Court had a comprehensive colloquy with the defendant at which time the defendant acknowledged he was aware of the consequences of pleading guilty and the rights the defendant was waiving by pleading guilty.

The defendant's motion is DENIED.

CP 10-12.

The court then proceeded with sentencing. The State recommended 35 days in jail, with credit for time served, no opposition to serving thirty days on alternative sanctions, standard community custody for a first-time offender drug offense, 24 months of community custody, and standard costs, fines and assessments. RP at 94. Defense counsel argued for credit for time served with no additional days in jail. RP at 95-96. Mr. Russell was given a chance for allocation. He stated that he did not "sell" methamphetamines or marijuana. RP at 97. After the court informed Mr. Russell that he pleaded guilty to possession of methamphetamine and

marijuana, not delivery, he stated that he had "a doctor's thing saying I can have marijuana" and denied that the methamphetamine was his. RP at 97, 103, 104. He stated that he told Mr. Longacre about the medical marijuana authorization "many times." RP at 104.

The court sentenced Mr. Russell as a first time offender, with 30 days in jail with credit for time served, 28 days converted to community service, fines, assessments and court costs, and 24 months of community supervision. RP at 99; CP 16-18.

At the conclusion of the hearing, the deputy prosecutor stated: "Your Honor, let me ask for a mental health exam as well." RP at 109. The court responded "okay." RP at 110. Defense counsel made no statement regarding a mental health examination.

In the Conditions of Community Custody, the court ordered:

> The defendant shall participate in mental health counseling or treatment at the direction of the CCO.

CP 25.

A timely notice of appeal was filed on May 16, 2011. CP 7. This appeal follows.

D. ARGUMENT

1. THE TRIAL COURT ERRED IN DENYING MR. RUSSELL'S MOTION TO WITHDRAW HIS PLEA BECAUSE HIS PLEA WAS NOT

VOLUNTARILY MADE BECAUSE OF HIS PHYSICAL IMPAIRMENTS AT THE TIME OF THE PLEA.

At the hearings following his change of plea hearing Mr. Russell demonstrated a lack of understanding of whether he had entered an *Alford* plea, whether he pleaded guilty to selling marijuana and methamphetamine, and his available defenses to the charge. The record is characterized by frequent statements by Mr. Russell concerning ancillary matters, denial of the offense even after changing his plea, and expressing considerable confusion regarding almost every aspect of the case. RP at 46, 51-52, 55, 56, 61, 62, 63, 64, 71, 74, 83, 95, 96-97, 98, 100-02, 103, 104, 105, 107, 108, 109. At the February 7, 2011 hearing, the deputy prosecutor referred to a message left by Mr. Russell with his office indicating his belief that he had not yet entered a guilty plea. RP at 49. In the hearings, Mr. Russell frequently noted that he was unable to hear counsel and the court. RP at 1, 16, 17, 19, 40, 43, 58, 93, 102.

Criminal rule 4.2(f) governs the withdrawal of a guilty plea and provides that:

> The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.

There are four non-exclusive situations which meet the "manifest injustice" standard: (1) ineffectiveness of trial counsel; (2) a plea not ratified by the defendant; (3) an involuntary plea; and (4) a prosecutor's failure to keep the State's part of the plea bargain. *State v. Wakefield*, 130 Wn.2d 464, 925 P.2d 183 (1996); *State v Taylor*, 83 Wn.2d 594, 597, 521 P.2d 699 (1974); *State v Dixon*, 38 Wn. App. 74, 76, 683 P.2d 1144, rev. denied, 103 Wn.2d 1003 (1984). The defendant must establish a manifest injustice in light of all of the surrounding circumstances. *Dixon*, supra.

Moreover, due process requires that a guilty plea be knowing, intelligent and voluntary. *In re Hews*, 108 Wn.2d 579, 590, 741 P.2d 983 (1987). "[A] plea is not voluntary within due process requirements unless the defendant understands the requisite elements of and necessary facts supporting the charge to which he pleads." *Hews*, 108 Wn.2d at 590. "At a minimum, 'the defendant would need to be aware of the acts and the requisite state of mind in which they must be performed to constitute a crime.'" *State v. Osborne*, 102 Wn.2d 87, 92 -92, 684 P.2d 683 (1984) (quoting *State v. Holsworth*, 93 Wn.2d 148, 153, n.3, 607 P.2d 845 (1980)).

The record before and after the change of plea hearing shows that Mr. Russell had a hard time hearing and understanding what was

happening, that he had reservations about being found guilty, did not understand that he had actually pleaded guilty, did not understand the nature of the charge to which he entered a plea, and did not believe his attorney had adequately explained the case to him. This record is substantial when considered along with the information provided by defense counsel at sentencing indicating that Mr. Russell was unable to hear what Mr. Longacre told him, had learning disabilities, was under duress from a Fish and Wildlife matter he faced, and demonstrated general confusion regarding almost every aspect of the case and legal process. Counsel submitted that Mr. Russell anticipated having a jury trial on November 15, 2011, and that Mr. Longacre "brow beat" him into accepting a plea. CP 29.

These facts, particularly the clear pattern of confusion, lack of comprehension, and hearing difficulties that Mr. Russell exhibited throughout the record, taken together, are sufficient to establish that Mr. Russell was not competent to enter a knowing, intelligent and voluntary plea. At the least these facts are sufficient to require an evidentiary hearing on Mr. Russell's competency to enter a guilty plea.

Where there is an allegation of incompetency to enter a guilty plea, the standard to be met is "whether the plea represents a voluntary and

intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); *State v Calvert*, 79 Wn. App. 569, 576, 903 P.2d 1003 (1995).

"'Incompetency' exists where a person 'lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." *State v Marshall*, 144 Wn.2d 266, 278, 27 P.3d 192 (2001) (quoting RCW 10.77.010(14)). When there is reason to doubt the defendant's competency or a "legitimate question of competency," under RCW 10.77.050 and .060(1), the trial court must conduct a competency hearing. *Marshall*, 144 Wn.2d at 278.

Here, the transcript of the hearings following the change of plea hearing on November 15, 2010 establishes many reasons to doubt Mr. Russell's ability to understand what was happening and to make an intelligent choice. He was obviously had problems hearing and understanding what was happening and the consequences of his plea, and the nature of the charge to which he was pleading guilty.

Once a substantial issue of competency has been raised, it is the duty of the court to hold a hearing to determine the issue. *Marshall.*

2. MR. RUSSELL'S PLEA IS INVALID BECAUSE THE STATE BREACHED THE PLEA AGREEMENT BY REQUESTING A MENTAL HEALTH EXAMINATION.

A defendant shall be allowed to withdraw his plea of guilty whenever it appears that withdrawal is necessary to correct a manifest injustice, i.e., an injustice that is obvious, directly observable, overt, not obscure. *State v. Taylor*, 83 Wn.2d 594,598,521 P.2d 699 (1974). In *Taylor*, the Court set forth four indicia of manifest injustice which would allow withdrawal of a guilty plea: (1) the denial of effective assistance of counsel, 2) the plea was not ratified by the defendant, (3) the plea was involuntary, and (4) the plea agreement was not honored by the prosecution. Any of the four indicia listed above would independently establish "manifest injustice" and would require a trial court to allow a defendant to withdraw his plea. *State v. Taylor*, 83 Wn.2d at 597; see also *State v. Wakefield*, 130 Wn.2d 464,472,925 P.2d 183 (1996).

A plea agreement is a contract between the State and the defendant. *State v. Talley*, 134 Wash.2d 176, 182 (1998) and *State v Sledge*, 133 Wash.2d 828, 838 (1997). Plea agreements are subject to contract law standards of interpretation. *State v. Sledge*, 133 Wn.2d at 839. Because the defendant waives critical constitutional rights by

agreeing to a plea bargain, the State is obligated to adhere to the terms of the plea agreement by recommending the agreed upon sentence. *Talley*, 134 Wn.2d at 182; *Sledge*, 133 Wash.2d at 838-839.

A breach of a plea agreement is a violation of due process, is prejudicial, and is subject to review under RAP 2.5(a)(3) to determine whether "manifest injustice" mandates withdrawal of a guilty plea under CrR 4.2(f) even if the appellant did not adequately object or move to set aside the guilty plea. *State v. Van Buren*, 101 Wn.App. 206, 211-212, 2 P.3d. 991 (2000).

In determining whether a plea agreement has been broken, courts look to "what was 'reasonably understood by [the defendant] when he entered his plea of guilty.'" *U.S v. Arnett*, 628 F.2d 1162, 1164 (9 Cir. 1979). The State's actual intent, motivation or justification is irrelevant. *Van Buren*, 101 Wn.App. at 213. If disputed, the terms of the agreement will be determined by objective standards. *U S v. Kamer*, 781 F.2d 1380, 1387 (9 Cir. 1986), *cert. denied,* 479 U.S. 819, 107 S.Ct. 80, 93 L.Ed.2d 35 (1986). In order to determine the reasonable understanding and expectations of the defendant, objective standards are utilized. *Id.*, See also *State v. Williams*, 103 Wn.App. 231, 236, 11 P.3d 878 (2000).

The proper remedy for a State breach is to allow the defendant to choose whether to withdraw the guilty plea or seek specific performance. *State v. Williams*, 103 Wn.App. at 239. If the defendant seeks specific enforcement, he is entitled to a new sentencing before a different judge. *State v. Miller*, 110 Wn.2d 528, 535, 756 P.2d 122 (1988) and *State v Williams*, 103 Wn.App. at 239.

Mr. Russell anticipates that the State will argue in response that it did not breach the agreement because the deputy prosecutor did in fact recommend a first time offender sentence, with 35 days, with 30 days converted to alternative sanction as per the language in the change of plea statement. RP at 94; CP 56. However, the State went beyond that recommendation when it requested a mental health examination as part of the terms of community custody. RP at 109.

Mr. Russell's reasonable understanding was that the State would not ask the court to impose an additional, unanticipated term of community custody.

The trial court has the obligation to ensure that a defendant's plea is made "voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). Likewise, there is a requirement that the "nature of the agreement ..." be made part

of the record at the time the plea is taken. CrR 4.2(e). Mr. Russell objectively is reasonable in believing that the State's request for a mental health exam was a violation of the plea agreement.

Kamer, supra, is instructive. In that case, the plea agreement was silent as to any probationary term. *Id.* at 1387. The court noted that it was not uncommon for probation to be one of the considered elements of a plea bargain and ruled: "Thus, failure to expressly provide for a probationary term must be construed as an intentional omission designed to preclude its imposition." *Id.* at 1388.

In Mr. Russell's case, since the plea recommendation contained in the guilty plea statement [CP 56] specifically did not mention a mental health examination as part of community custody, that omission must be construed as intentional.

3. THE COURT ERRED IN ORDERING MENTAL HEALTH TREATMENT AS A CONDITION OF COMMUNITY CUSTODY.

The court erred when it ordered Mr. Russell, as a condition of community custody, to "participate in mental health counseling or treatment." CP 25. Reversal of this portion of the sentence is required.

RCW 9.94B.080 provides:

> The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

A court may impose only a sentence that is authorized by statute. *State v Barnett*, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). RCW 9.94B.080 authorizes a trial court to order mental health evaluation and treatment as a condition of community custody only when the court follows specific procedures. *State v. Brooks*, 142 Wn. App. 842, 851, 176 P.3d 549 (2008). A court may therefore not order an offender to participate in mental health treatment as a condition of community custody "unless the court finds, based on a presentence report and any applicable mental status evaluations, that the offender suffers from a mental illness which influenced the crime." *State v. Jones*, 118 Wn. App. 199, 202, 76 P.3d 258 (2003); accord *State v Lopez,* 142 Wn. App. 341, 353, 174 P.3d 1216 (2007).

Here, no Pre-sentence Investigation was ordered and no mental health evaluation was entered. Moreover, the court did not make the statutorily-mandated finding that Mr. Russell was a "mentally ill person" as defined by RCW 71.24.025 and that this mental illness influenced the crimes for which he was convicted. RP at 109-10. The trial court thus erred in imposing the mental health treatment condition. *Jones*, 118 Wn. App. at 202; *Lopez*, 142 Wn. App. at 353-54.

In *Jones*, defense counsel stated that Jones was bipolar, that he was off his medications at the time of his crimes, and that this combination "obviously resulted" in the crimes. *Jones*, 118 Wn. App. at 209. This Court held that the trial court nevertheless lacked authority to order Jones to participate in mental health treatment in part because it did not make the statutorily required finding that Jones was a person whose mental illness contributed to his crimes. *Id.*

Here, in the absence of statutorily required findings, imposition of the mental health component of community custody was improper.

Sentencing errors derived from the court's failure to follow statutorily mandated procedures can be raised for the first time on appeal. *Jones*, 118 Wn. App. at 204. This Court should order the trial court to

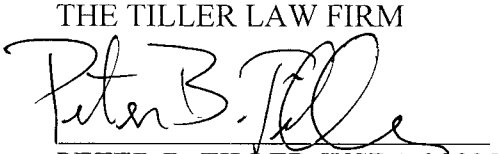
strike the conditions pertaining to mental health treatment. *Lopez,* 142 Wn. App. at 354.

E. CONCLUSION

Mr. Russell respectfully submits that he should be permitted to withdraw his guilty plea because his mental and physical condition at the time of the plea hearing rendered him incompetent to enter a plea, and because the State breached its plea agreement. In the event this Court declines to do so, this Court should reverse that portion of the sentence relating to the challenged condition of community custody and remand for the purpose of striking the condition.

DATED: November 22, 2011.

Respectfully submitted,
THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for Eric Russell

CERTIFICATE OF SERVICE

The undersigned certifies that on November 22, 2011, that this Opening Brief was mailed by U.S. mail, postage prepaid, to the Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and copies were mailed by U.S. mail, postage prepaid, to Mr. Timothy Whitehead, Deputy Prosecuting Attorney, P.O. Box 639, Shelton, WA 98584, and to the appellant, Mr. Eric Russell,

34671 US Highway 101Lilliwaup, WA 98555, true and correct copies of this Brief.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on November 22, 2011.

PETER B. TILLER

EXHIBIT A

Statutes and Court Rule

RCW 9.94B.080
Mental status evaluations.

The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

RCW 71.24.025
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available

twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(11) "Department" means the department of social and health services.

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(14) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state

minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(23) "Residential services" means a complete range of residences and

supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, boarding homes, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or

inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest.

[2008 c 261 § 2; 2007 c 414 § 1; 2006 c 333 § 104. Prior: 2005 c 504 § 105; 2005 c 503 § 2; 2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4; prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

RCW 69.50.4013

Possession of controlled substance — Penalty.

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

[2003 c 53 § 334.]

RULE CrR 4.2
PLEAS

(a) Types. A defendant may plead not guilty, not guilty by reason of insanity, or guilty.

(b) Multiple Offenses. Where the indictment or information charges two or more offenses in separate counts, the defendant shall plead separately to each.

(c) Pleading Insanity. Written notice of an intention to rely on the insanity defense, and/or a claim of present incompetency to stand trial, must be filed at the time of arraignment or within 10 days thereafter, or at such later time as the court may for good cause permit. All procedures concerning the defense of insanity or the competence of the defendant to stand trial are governed by RCW 10.77.

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(e) Agreements. If the defendant intends to plead guilty pursuant to an agreement with the prosecuting attorney, both the defendant and the prosecuting attorney shall, before the plea is entered, file with the court their understanding of the defendant's criminal history, as defined in RCW 9.94A.030. The nature of the agreement and the reasons for the agreement shall be made a part of the record at the time the plea is entered. The validity of the agreement under RCW 9.94A.431 may be determined at the same hearing at which the plea is accepted.

(f) Withdrawal of Plea. The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice. If the defendant pleads guilty pursuant to a plea agreement and the court determines under RCW 9.94A.431 that the agreement is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.401-.411, the court shall inform the defendant that the guilty plea may be withdrawn and a plea of not guilty entered. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.

(g) Written Statement. A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty:

[Form omitted]